

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs March 14, 2006

**ANDRE L. MAYFIELD v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Davidson County**  
**No. 88-F-1762; 89-W-222; IF-5635     Steve Dozier, Judge**

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**No. M2005-01988-CCA-R3-PC - Filed May 31, 2006**

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The Appellant, Andre L. Mayfield, proceeding *pro se*, appeals the Davidson County Criminal Court's summary dismissal of his petition for post-conviction relief upon grounds that the petition is time-barred. On April 18, 2005, Mayfield filed the instant petition collaterally attacking his 1989 convictions for robbery and receiving stolen property. He alleges that the convictions are facially invalid and void due to the trial court's imposition of concurrent sentences despite the fact that he was on bail when the offenses were committed. The post-conviction court summarily dismissed the petition as time-barred. After review, we affirm summary dismissal of the petition.

**Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed**

DAVID G. HAYES, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and ROBERT W. WEDEMEYER, JJ., joined.

Andre L. Mayfield, *Pro Se*, Mountain City, Tennessee.

Paul G. Summers, Attorney General and Reporter; Preston Shipp, Assistant Attorney General; and Amy Eisenbeck, Assistant District Attorney General, for the Appellee, State of Tennessee.

**OPINION**

**Procedural History**

The Appellant is no novice with regard to the filing of post-judgment proceedings. *See Andre Mayfield v. Howard Carlton, Warden*, No. E2004-01561-CCA-R3-HC (Tenn. Crim. App. at Knoxville, Feb. 18, 2005) (involving the dismissal of a habeas corpus petition by this court with noted reference to two other petitions for habeas corpus relief filed by the Appellant). In this most recent appeal, the Appellant seeks relief by means of a post-conviction proceeding upon virtually the same grounds for which he sought relief in the above dismissed habeas corpus petition.

In the petition before us, which was filed in April, 2005, the Appellant asserts that in 1988, he was arrested for armed robbery, and, while on bail for this offense, he was "once again arrested

and charged with the offense of receiving stolen property.” He further asserts that he posted bond for this latter offense, but, while on bail for armed robbery and receiving stolen property, he was arrested again and charged with second degree burglary.

Subsequently, as noted by this court in the denial of his petition for habeas corpus relief:

The [Appellant] pled guilty in 1989 to robbery, receiving stolen property, and burglary. The [Appellant] received concurrent five-year sentences for the first two of these offenses and a consecutive three-year term for the burglary, resulting in an effective sentence of eight years.<sup>1</sup> In 1999, a jury convicted the [Appellant] of two counts of aggravated kidnapping, one count of aggravated robbery, one count of aggravated rape, and one count of rape. For these crimes, the [Appellant] received an effective sentence of fifty years. His sentences for these crimes were enhanced on the basis of his 1989 convictions. The [Appellant] is currently incarcerated under the sentences he received for the 1999 conviction.

*Id.*

On July 7, 2005, the post-conviction court entered an order summarily dismissing the Appellant’s petition as time-barred. The court further found that the petition could not properly be treated as one for habeas corpus relief. Thereafter, the Appellant filed an application for a Rule 10 Extraordinary Appeal with this court, which was denied on August 4, 2005. Subsequently, the Appellant filed a timely notice of appeal, which is now before us.

### **Analysis**

On appeal, the Appellant challenges the post-conviction court’s summary dismissal of his petition for post conviction relief. In effect, the Appellant is seeking to have his 1989 convictions declared illegal and, thus, void under the holding of *McLaney v. Bell*, 59 S.W.3d 90 (Tenn. 2001). He then argues that, based upon the due process holding of *Burford v. State*, 845 S.W.2d 204 (Tenn. 1992), that his 1999 convictions and resulting fifty-year sentence be vacated because of sentencing enhancement as a Range II offender due to the 1989 convictions. As such, he asserts on appeal (1) that the post-conviction court erroneously applied the statute of limitations to bar consideration of his petition in violation of *Burford*; and (2) that the court erred in holding that it was without jurisdiction to treat the Appellant’s post-conviction petition as one for habeas corpus relief.

#### **I. Due Process/*Burford v. State***

The Appellant asserts that the “post conviction court unconstitutionally appl[ied] the statute of limitations to bar consideration of the post conviction relief petition in this case within the

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<sup>1</sup>In his petition, the Appellant alleges that his 1989 sentences expired in September of 1992 and that he was released from the Department of Correction at the time.

meaning of *Burford v. State* . . . .” The Appellant entered his guilty pleas on June 1, 1989, and no direct appeal was taken in the case. Thus, the judgments of conviction became final in July 1989. At the time of the Appellant’s 1989 convictions, the statute of limitations applicable to post-conviction proceedings was three years. T.C.A. § 40-30-102 (1986) (repealed 1995). Accordingly, in order to comply with the statute of limitations, the Appellant had until July 1992 to file for post-conviction relief.

The Appellant’s reliance upon *Burford* is misplaced. While our supreme court has held that, under narrow and limited circumstances, constitutional due process requires that the statutory limitation period for requesting post-conviction relief may not be strictly applied, those circumstances do not exist in this case. In order for *Burford* to apply, the grounds for post-conviction relief must have actually arisen after the limitations period commenced. Here, the factual grounds relied upon by the Appellant are not “later arising,” as the Appellant was certainly aware when he pled guilty in 1989 to receiving stolen property that he committed this crime while on bail for armed robbery. Accordingly, due process concerns are not implicated because the Appellant had a three-year period following his guilty plea to present this claim. For these reasons, we conclude that the post-conviction court did not err in summarily dismissing the Appellant’s petition for post-conviction relief as being time-barred.

## **II. Habeas Corpus Relief**

Next, the Appellant asserts that the post-conviction court erred in holding that it was without jurisdiction to treat the Appellant’s post-conviction petition as one for habeas corpus relief because the application was filed in Davidson County and the Appellant is currently incarcerated in a correctional facility in Johnson County. We agree with this ruling. *See* T.C.A. § 29-21-105 (2003).

Moreover, we are constrained to note that “[w]hile the trial court may treat a habeas corpus petition as a petition for post-conviction relief under appropriate circumstances, Tennessee Code Annotated § 40-35-205(c), there is no provision that a petition for post-conviction relief may be treated as one for habeas corpus relief.” *Robert Lewis Wilks v. State*, No. M2002-00592-CCA-R3-PC (Tenn. Crim. App. at Nashville, Dec. 10, 2002) (citing *Moran v. State*, 457 S.W.2d 886, 887 (Tenn. 1970)). Finally, as noted *supra*, the Appellant has previously sought habeas corpus relief, alleging the identical issues, and a panel of this court has affirmed that habeas relief is not appropriate, as the 1989 sentences have long since expired. *See Mayfield*, No. E2004-01561-CCA-R3-HC (citing *Hickman v. State*, 153 S.W.3d 16, 19-20 (Tenn. 2004)). Accordingly, we find no error in the post-conviction court’s refusal to treat the Appellant’s petition as one seeking habeas corpus relief.

## **CONCLUSION**

Based upon the foregoing, the Davidson County Criminal Court’s summary dismissal of the Appellant’s petition for post-conviction relief is affirmed.

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DAVID G. HAYES, JUDGE